REMARKS

Applicants enclose a terminal disclaimer to obviate the obviousness-type double patenting rejection of claims 5–9 and 11. Applicants therefore request that the rejection be withdrawn. As claim 11 is not rejected based on the cited references, Applicants request allowance of claim 11.

Independent claims 1, 2, 5, 13 and 14 are rejected under 35 U.S.C. 103(a) over Bosh, Freedlander, Hirschman, Morgan and/or Harris. As conceded in the Action, none of the cited references describes, teaches, or suggests the dimensions specifically recited in the independent claims. However, the Action states that:

> the Examiner takes notice that it is well known in the art to make custom sized mattresses to order using any desired set of dimensions. Because of this, the actual width of the mattress and/or the boxspring is little more than a matter of design choice that is readily apparent to the skilled artisan.

Applicants disagree. Applicants respectfully submit that if mattresses, foundations, or bed assemblies having the recited dimensions were known to those skilled in the art, there must also exist a reference describing such knowledge.

Applicants call the Examimer's attention to MPEP § 2144.03, which specifies that an Examiner only may take official notice of facts outside of the record, which are capable of "instant and unquestionable demonstration as being 'well known' in the art." In re Ahlert, 434 F.2d 1099, 109 165 USPQ 418, 420 (CCPA 1970). If the Examiner relies on personal knowledge, Applicants are entitled to an affidavit by the Examiner, so that the Applicant can refute with specificity the Examiner's assertion. Accordingly, Applicants request that the Examiner either provide Applicants with an additional prior art reference directed to the supposed common knowledge, provide an affidavit in compliance with MPEP § 2144.03 or withdraw the § 103 rejections of independent claims 1, 2, 5, 13, and 14.

Claims 3–4 depend on claim 2 and add further limitations thereto. Claims 6–8 and 10 depend on claim 5 and add further limitations thereto. Therefore applicants request reconsideration and withdrawal of the §103 rejections of these claims, as well. The Action does not specifically address the patentability of claim 12. In case this omission was an oversight,

Applicants submit that the remarks made above apply equally to claim 12, as claim 12 depends from claim 5 and adds further limitations, thereto.

In view of the above remarks, Applicants believe the pending application is in condition for allowance.

Applicants believes a fee is due with this response. Please charge our Deposit Account No. 18-1945, under Order No. SMCY-P04-062 from which the undersigned is authorized to draw.

Dated: August 9, 2005

Respectfully submitted,

By _____

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